



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-1120**

**Appeal P-9500511**

**Ministry of Finance**



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## **NATURE OF THE APPEAL:**

This is an appeal brought under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for access to the report of an examination of a named credit union prepared pursuant to what was then section 138 of the Credit Unions and Caisses Populaires Act, R.S.O. 1980, c. 102 (the CUCPA). The Ministry denied access to the record under the following exemptions found in the Act:

- advice or recommendations - section 13
- third party information - section 17(1)
- law enforcement - section 14(2)

The requester appealed the Ministry's decision to deny access. A Notice of Inquiry was sent to the Ministry, the appellant and to one affected party. Representations were received from all of the parties.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

The Ministry denied access to the record at issue pursuant to section 14(2)(a) of the Act.

Section 14(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement,  
inspections or investigations by an agency which has the function  
of enforcing and regulating compliance with a law;

For a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the record must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

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With respect to the first part of the three-part test as to whether the record is a report, I have reviewed the record and I am satisfied that it is, in fact, a report within the meaning of the Act. As to the second part of the test, the affected party submits that the investigation report was prepared as part of the statutory duty of the Director of Credit Unions to ensure that credit unions comply with the requirements of the CUCPA. The affected party notes that the investigation

report identified violations of the legislation and required corrective actions on the part of the credit union for the purpose of enforcing compliance with that Act. Accordingly, the affected party submits that the report was prepared in the course of an inspection or investigation.

The CUCPA is a statute that provides for the establishment, regulation and supervision of credit unions in the province. It sets up a regulatory scheme and imposes statutory obligations on credit unions. In addition, the Act also prohibits certain actions in respect of the operations of credit unions. In respect of both the positive obligations and the prohibited actions the CUCPA prescribes penalties and sanctions for the contravention of its provisions.

Section 138(1) of the CUCPA (now section 139(1) of the Credit Unions and Caisses Populaire Act, R.S.O. 1990, C.44) required the Director of Credit Unions to review the annual statements of all credit unions. In addition, the section also authorized the Director (or his or her appointee) to "... inspect and examine into the conditions and affairs of any credit union ... to ascertain its condition and ability to provide for the payment of its liabilities as they become due, and whether or not it has complied with this Act."

I find that the record at issue was prepared in the course of an inspection for the purpose of determining whether there was compliance with the CUCPA. As that legislation provides certain penalties and sanctions for non-compliance with its provisions, I am satisfied that the record at issue in this appeal relates to a law enforcement matter as defined by section 2(1) of the Act.

The third part of the test requires that the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law. As set out above, the affected party submits that the CUCPA authorizes the Director of Credit Unions to conduct examinations and investigations for the purpose of enforcing and regulating compliance with that Act and, therefore, the Director's office constitutes such an agency. I agree and find that the third part of the test is satisfied. Accordingly, I find that the record at issue is exempt from disclosure under section 14(2)(a) of the Act.

Notwithstanding that a record may be exempt under section 14(2)(a) of the Act, section 14(4) provides an exception to the application of 14(2)(a). Section 14(4) states:

Despite clause (2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

The Ministry informs me that, despite the fact that the record itself states that it is a "Routine examination as part of the ongoing Regulatory Examination Program of the Credit Unions and Co-operatives Services Branch", it is their view that section 14(4) does not apply. The Ministry submits that, while annual statements must be reviewed routinely by the Director, the Director had the discretion under section 138(1) of the CUCPA to conduct a separate inspection as part of the enforcement and regulation of the statute.

While the CUCPA required the Director to routinely review the annual statements received under that Act, section 138(1) allowed the Director to exercise discretion as to whether an examination should take place. Section 138(1) did not require that **each** registered corporation

undergo an examination under this section on a regular basis, and the Ministry submits that such a requirement would be an operational impossibility. In my view, because the record is a report relating to inspections carried out pursuant to section 138(1) of the CUCPA, it was not the result of routine inspections. Accordingly, section 14(4) of the Act does not apply.

In summary, I find that the record is properly exempt under section 14(2)(a) of the Act. In view of this finding it is not necessary for me to address the claims for exemption made under sections 13 and 17 of the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ February 7, 1996